

CHAPTER 2
 BEGINNING FARMER LOAN PROGRAM
 [Prior to 4/22/87, Iowa Family Farm Development Authority [523] Ch 2]
Subchapter A—General Provisions
 PART I

25—2.1(175) Operational definitions.

“*Agricultural improvements*” means any improvements, buildings, structures or fixtures suitable for use in farming which are located on agricultural land. Agricultural improvements include a single-family dwelling located on agricultural land which is or will be occupied by the beginning farmer and structures attached to or incidental to the use of the building.

“*Agricultural land*” means land suitable for use in farming and which is or will be operated as a farm.

“*Application*” means a completed instrument with all of the information required by subrule 2.7(4) in the Bond Market Loan Program or rule 2.10(175) in the Individual Agricultural Development Bond Program. The time of application is when a completed application is submitted to the authority.

“*Bond purchaser*” means any person as defined in Iowa Code section 4.1(13), other than a participating lender, who purchases an authority bond under the Individual Agricultural Development Bond Program.

“*Depreciable agricultural property*” means personal property suitable for use in farming for which an income tax deduction for depreciation or cost recovery is allowable in computing federal income tax under the Internal Revenue Code and which is qualified for financing with tax-exempt bonds pursuant to section 144 of the Internal Revenue Code.

“*Eligible applicant*” means an individual who is a beginning farmer, as defined in Iowa Code section 175.12, who satisfies all of the criteria contained in the Act and provisions of these rules relating to recipient eligibility and who operates or will operate a farm.

“*Farm*” means a farming enterprise which is recognized in the community as a farm rather than a rural residence.

“*Lender*” means a participating lender or a bond purchaser.

“*Participating lender*” means any bank, trust company, bank holding company, mortgage company, national banking association, savings and loan association, life insurance company, state or federal governmental agency or instrumentality or other financial institution or entity authorized and able to make mortgage loans or secured loans in this state.

Total assets shall include but not be limited to the following: Cash; crops or feed on hand; livestock held for sale; breeding stock; marketable bonds and securities; securities (not readily marketable); accounts receivable; notes receivable; cash invested in growing crops; net cash value of life insurance; machinery, equipment, cars and trucks; farm and other real estate including life estates and personal residence; value of beneficial interest in a trust; government payments or grants; any other assets.

Total liabilities shall include but not be limited to the following: Accounts payable; notes or other indebtedness owed to any source; taxes; rent; amount owed on real estate contract or real estate mortgages; judgments; accrued interest payable; any other liabilities.

1. Total assets shall not include items used for personal, family or household purposes by the applicant; but in no event shall any property be excluded, to the extent a deduction for depreciation is allowable for federal income tax purposes. All assets shall be valued at fair market value by the participating lender. The value shall be what a willing buyer would pay a willing seller in the locality. A deduction of 10 percent may be made from fair market value of farm and other real estate.

2. Liabilities shall be determined on the basis of generally accepted accounting principles.

PART II

25—2.2(175) General provisions.

2.2(1) Forms. The executive director shall prepare and, as needed, revise and amend, with the approval of the authority, forms necessary for administration of authority programs. The number and type of forms shall be sufficient to safeguard the interests of the authority.

The authority shall annually assess the effectiveness of its administrative procedures, including all forms, and make any modifications which, in the judgment of the authority, are necessary or would facilitate efficient authority operations.

2.2(2) Waiver. The authority may by resolution waive or vary particular provisions of these rules to conform to requirements of the federal government in connection with a beginning farmer with respect to which federal assistance, insurance or guaranty is sought, provided such waiver does not conflict with the Act.

25—2.3(175) Recipient eligibility.

2.3(1) Residence. The beginning farmer must be a resident of Iowa at the time the bond is issued to finance the loan.

2.3(2) Training and experience. The beginning farmer must have documented to the satisfaction of the lender and the authority sufficient education, training, and experience, for the anticipated farm operations.

2.3(3) Access to capital. The beginning farmer must, as a condition of loan closing, demonstrate to the satisfaction of the lender and the authority access to the following, as may be needed: Adequate working capital; farm machinery; livestock; agricultural land.

2.3(4) Unavailability of alternative credit. The authority may require the beginning farmer at the time of loan application to present to the lender formal evidence satisfactory to the lender that the beginning farmer has been unable to secure credit on terms which the beginning farmer could be reasonably expected to fulfill. The authority may require such additional certifications and evidence from the lender and the beginning farmer as the authority may deem appropriate.

This rule is intended to implement Iowa Code section 175.12.

Subchapter B—Bond Market Loan Program

25—2.4(175) Limitations on agricultural improvements and depreciable property.

2.4(1) Agricultural improvements and agricultural depreciable property which are to become a fixture or an integral part of real estate may be financed by the authority only if the beginning farmer owns the real estate on which they are to be located.

2.4(2) Reserved.

25—2.5(175) Loan eligibility.

2.5(1) Security for loans. The authority may take security for any loan. The form of security may include, but not be limited to a promissory note, security agreement, or first mortgage.

2.5(2) Loan conditions. Fees and interest rates, loan-to-value ratio, maximum loan amount, amortization period, repayment, prepayment, assumption, and assumption terms of a loan shall be determined from time to time by the authority and shall be contained in the security and servicing documents relating to the loan.

2.5(3) A loan may not be assumed or any interest in agricultural land, agricultural improvements or agricultural depreciable property may not be leased, sold, exchanged or used as a trade-in, used on an equipment-for-hire basis or otherwise conveyed without the prior written consent of the authority. The authority shall not consent to an assumption of its loan or the conveyance of such property subject to its mortgage or security agreement unless the purchaser of the property would be an eligible applicant for an authority loan.

2.5(4) Loan delinquency, foreclosure, and repossession provision shall be determined from time to time by the authority and shall be contained in the security and servicing documents relating to the loan.

PART III

25—2.6(175) Procedures for application by participating lenders.

2.6(1) The authority will disseminate a summary of the beginning farmer program to eligible lending institutions located within Iowa. Lenders wishing to secure a commitment of agricultural development authority funds must submit a letter of interest to the agricultural development authority by the initial application deadline set out in the letter of instructions accompanying the program summary.

2.6(2) The agricultural development authority board will review the letters of interest and will determine if the requests would provide opportunity for statewide participation by beginning farmers.

2.6(3) Based on the above determination, the agricultural development authority will send full program information and documents to selected lenders, and will invite full applications in a format prescribed by the agricultural development authority and sent to all lenders initially, with the program summary.

2.6(4) Prospective participating lenders must complete and execute the full application and forward to the agricultural development authority with any commitment fee required on or before the final application deadline set out in the letter of instructions accompanying the program summary.

2.6(5) The full application must be based on the participating lender's estimate of potential for timely loan of the agricultural development authority funds to qualified beginning farmers.

25—2.7(175) Application procedures—beginning farmers.

2.7(1) The agricultural development authority shall give public notice of the application period, application procedures, and participating lenders, as soon as possible after the initial lender application deadline.

2.7(2) Beginning farmers may apply to participating lenders during the application period, defined as the period between the starting and ending dates and times set out in the letter of instructions accompanying the program summary.

All applications will be taken and processed on a first-come, first-served basis. Applications approved for funding, subject to sale of the agricultural development authority bonds, will be given priority by the lender on a first-come, first-served basis.

An application shall expire if it is subsequently denied any applicable guarantee or insurance or is rejected by the lender or the authority as unqualified. An application shall lose its priority if it is not funded by the authority within the number of days following the issuance of the authority's bonds issued to fund the loan determined by the authority as a reasonable period of time to deliver the loans. In any of these events, the participating lender's commitment (to the extent available) shall be allocated to the next qualified applicant of the original applications, if any, and any subsequent applicants, if any, to the extent permitted by law, on a first-come, first-served basis.

The authority may deviate from the first-come, first-served rule to the extent necessary to (a) comply with federal income tax laws and regulations, or (b) fully utilize the proceeds of any series of bonds or allocations of bond proceeds to participating lenders.

2.7(3) Applications will be made on customary and appropriate forms approved by the authority. Each application must include the following: applicant name, address and credit data; description of anticipated use of beginning farmer loan proceeds; amount of loan and applicant down payment (if any); the agricultural development authority net worth compliance; application for FmHA commitment (if applicable); last two years' federal income tax returns.

2.7(4) Each participating lender shall, within one year of the date of issuance of the bonds from which the agricultural development authority loan is made, have originated and disbursed all of the loan proceeds to beginning farmers. Failure to comply will result, at a minimum, in forfeiture of any commitment fees and loss of the unused agricultural development authority commitment.

25—2.8(175) Allocation of bond proceeds among participating lenders.

2.8(1) The authority will aggregate its approved full applications and will base its preliminary offering circular on the aggregate loan amount. Based on the ratio between the amount of bonds actual-

ly sold by the agricultural development authority and the aggregate loan application amounts, the agricultural development authority will allocate its bond proceeds to the participating lenders, with those adjustments as the authority deems appropriate.

2.8(2) Participating lenders shall maintain adequate books and records setting forth payments received and disbursements made pursuant to all authority loans. The participating lender's books and records shall be available for examination by the authority or its agent at any time during normal business hours.

Rules 25—2.1(175) to 2.8(175) are intended to implement Iowa Code section 175.12.

Subchapter C—Individual Agricultural Development Bond Program

PART IV

25—2.9(175) Individual agricultural development bond program description. This program is intended to allow beginning farmers to obtain lower interest rate loans for qualified purposes by obtaining loan funds from the proceeds of a tax-exempt bond issued by the authority and purchased by the lender. The authority will enter into a loan agreement with the beginning farmer and assign that loan to the lender. At the same time, the authority will issue a tax-exempt bond in the amount of the loan and the lender will purchase that bond, which is used to fund the loan assigned to the lender. The bond which is issued by the authority and purchased by the lender is a nonrecourse obligation. The only security for the lender is the underlying security on the assigned loan.

PART V

25—2.10(175) Definitions. “*Application*” means a completed instrument on a form approved by the authority. Each application must include the following: applicant name, address, and credit data, description of anticipated use of loan proceeds, amount of loan and applicant down payment (if any), and the authority's net worth compliance.

PART VI

25—2.11(175) Application procedures. The beginning farmer may apply (on forms approved by the authority) for an authority loan with any lender. Any loan approved will be assigned to that lender. Authority loan eligibility is determined by the requirements of the Act and the rules of the authority.

If a beginning farmer meets the loan eligibility requirements, the decision on whether to enter into the loan agreement is between the beginning farmer and the lender. They must agree on terms of the loan such as interest rates, length of loan, down payment, service fees, origination charges, and repayment schedule, which may not be any more onerous than those charged to similar customers for similar loans, but taking into account the tax-exempt nature of interest on the loan.

Following completion of the loan application by the beginning farmer and approval by the lender, the loan application must be submitted to the authority for its review and approval. The authority's review will include, but not be limited to, whether (1) the loan applicant is a qualified beginning farmer, (2) the loan proceeds will be used for a qualified purpose by a qualified borrower under the Act, rules of the authority, and the Internal Revenue Code and IRS regulations relating to private activity bonds, (3) the terms of the loan comply with these rules, and (4) the lender meets the definition of a participating lender or bond purchaser. The authority may require that the lender furnish any information which the authority deems necessary to determine whether the lender qualifies as either a participating lender or bond purchaser. If the authority determines that the lender does not qualify as either a participating lender or bond purchaser, it may deny the application. As part of its review, the authority and lender may require the beginning farmer to submit appraisals on part or all of the property being financed by the loan or to submit any or all other documents and information as may be necessary to complete its review of the loan application.

Following approval and issuance of the bond, the authority will enter into a loan agreement with the beginning farmer and then assign the loan without recourse to the lender. The authority may charge fees as needed to defray its costs for processing the loan and bond.

25—2.12(175) Issuance of bond. The authority will not issue a bond for the purpose of financing a project for a specific beginning farmer unless, prior to its issuance, the authority has conducted a public hearing conforming to the applicable requirements of the United States Internal Revenue Code of 1986 as amended, and its regulations. Upon receipt of a completed application, in a form prescribed by the authority, the executive director of the authority shall set a date, time and place for the hearing. The hearing shall be preceded by a notice published at least 14 days prior to the date of the hearing in a newspaper of general circulation and available to residents in the county where the project is located. The notice shall include, but not be limited to, the date, time and place of the hearing, the name of the beginning farmer, a general description of the project, and the right of individuals to request a local hearing.

The hearing shall be held in the authority's offices in Des Moines, or other location stated in the notice, unless at or prior to the time scheduled for the hearing, the authority receives a written request that a local hearing be held. In the event a local hearing is requested, the previously scheduled hearing may be canceled. The executive director of the authority shall set a date, time and place for a local hearing and notice of the hearing in the local area shall be published as stated above. The date, time and place for the local hearing shall be reasonably convenient to persons affected by the project.

Public hearings may be held by a staff member, board member of the authority, an appointee or employee of the authority, or other qualified hearing officer.

The authority will not issue a bond for the purpose of financing a project by a specific beginning farmer unless, prior to the issuance, the governor or another elected official of the state designated by the governor, shall approve the issuance of the bond. Following the public hearing, the authority shall prepare and send to the governor's office, or the office of the elected official of the state designated by the governor, a statement describing each bond or series of bonds which it proposes to issue, along with a summary of the public comments received with respect thereto, if any.

Following approval of the loan by the authority, and upon completion of a public hearing and approval of the bond issuance by the governor or another elected state official designated by the governor, the authority will issue a bond, to be purchased by the lender, in the amount and fitting the terms of the loan to the beginning farmer. The principal and interest on the bond is a limited obligation payable solely out of the revenues derived from the loan to the beginning farmer and the underlying collateral or other security furnished by or on behalf of the beginning farmer. The lender shall have no other recourse against the authority. The principal and interest on the bond does not constitute an indebtedness of the authority or a charge against its general credit or general fund.

25—2.13(175) Participating lenders. Rescinded IAB 2/21/90, effective 3/28/90.

25—2.14(175) Bond purchaser. Any individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity, other than a participating lender, may be the purchaser of an authority bond under the Individual Agricultural Development Bond Program in connection with a contract sale or loan to the beginning farmer.

25—2.15(175) Minimum loan. There will be no minimum amount for a loan under this program.

25—2.16(175) Priority of applications. Applications shall be processed by the authority on a first-come, first-served basis, based upon the receipt of all completed documents by the authority.

PART VII

25—2.17(175) Procedures following bond issuance. No bond proceeds may be used for a nonqualified purpose or by a nonqualified user. Following disbursement of the bond proceeds, the lender and beginning farmer may be required to certify to the authority that the proceeds were used by the qualified beginning farmer for a qualified purpose.

25—2.18(175) Assignment of loans by participating lenders. A participating lender may assign a loan in whole or in part to any person, as defined in Iowa Code section 4.1(13). Servicing of the loan may also be assigned, but must at all times be with a participating lender as defined in rule 25—2.13(175). The authority must be notified in writing prior to assignment of servicing of the loan.

25—2.19(175) Assignment of loans by bond purchasers. A bond purchaser may assign a loan in whole or in part to any person, as defined in Iowa Code section 4.1(13). The authority must be notified in writing prior to assignment of the loan.

25—2.20(175) Assumption of loans, substitution of collateral and transfer of property. Loans may not be assumed without the prior approval of the authority, and then only if the purchaser of the property is an eligible applicant for an authority loan. Equipment and other depreciable property may be exchanged or traded for similar property, and other property such as breeding livestock may be added or substituted as collateral at the discretion of the lender without the prior approval of the authority. The benefits of the loan made at the tax-exempt rate from the proceeds of an authority bond must remain with the qualified beginning farmer, and no person to whom property is traded or otherwise transferred may obtain the benefits of the authority loan.

25—2.21(175) Right to audit. The authority shall have at any time the right to audit the records of the lender and the beginning farmer relating to this loan and bond to ensure that bond proceeds were used for a qualified purpose by a qualified user.

Rules 2.9 to 2.21 are intended to implement Iowa Code sections 175.2, 175.12, 175.19 and 175.33.

[Filed emergency 1/2/81—published 1/21/81, effective 1/2/81]

[Filed emergency 1/19/81—published 2/4/81, effective 1/19/81]

[Filed emergency 9/25/81 after Notice 8/5/81—published 10/14/81, effective 9/25/81]

[Filed 9/23/82, Notice 8/4/82—published 10/13/82, effective 11/17/82]

[Filed emergency 12/17/82—published 1/5/83, effective 1/1/83]

[Filed emergency 1/28/83—published 2/16/83, effective 2/1/83]

[Filed emergency 4/28/83 after Notice 3/16/83—published 5/25/83, effective 4/28/83]

[Filed 8/26/83, Notice 7/6/83—published 9/14/83, effective 10/19/83]

[Filed 1/24/85, Notice 12/5/84—published 2/13/85, effective 3/20/85]

[Filed 4/3/87, Notice 1/28/87—published 4/22/87, effective 5/27/87]

[Filed emergency 9/28/87—published 10/21/87, effective 10/1/87]

[Filed 12/23/87, Notice 10/21/87—published 1/13/88, effective 2/17/88]

[Filed 8/16/89, Notice 5/17/89—published 9/6/89, effective 10/11/89]

[Filed 2/1/90, Notice 11/1/89—published 2/21/90, effective 3/28/90]